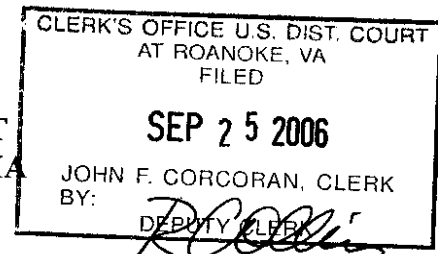


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION



ANTONIO LUIS DIAZ-RODRIGUEZ, )

Petitioner, )

v. )

UNITED STATES OF AMERICA, )

Respondent. )

Civil Action No. 7:05cv00367

**FINAL ORDER ADOPTING REPORT  
AND RECOMMENDATION**

By: Samuel G. Wilson

United States District Judge

Antonio Luis Diaz-Rodriguez brings this action under 28 U.S.C. § 2255, alleging that his counsel provided ineffective assistance by failing to file a notice of appeal. By order dated December 22, 2005, the court referred the matter to United States Magistrate Judge Michael Urbanski for an evidentiary hearing. The Magistrate Judge conducted a hearing on March 30, 2006. The Magistrate Judge has filed a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B), concluding that petitioner has met his burden of proving counsel's assistance was ineffective inasmuch as counsel failed to consult with petitioner regarding the advantages and disadvantages of filing an appeal. Neither party has filed objections to the Magistrate Judge's Report and Recommendation, and having reviewed the Report and Recommendation and pertinent portions of the record, the court agrees with the Magistrate Judge's recommendation.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** as follows:

1. The Report and Recommendation is **ADOPTED** in its entirety;
2. Petitioner's Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 is **GRANTED**;
3. The Judgement Order in Diaz-Rodriguez's Criminal Case No. 5:03CR70006-5 is **VACATED**;

4. The Clerk of the Court **SHALL** prepare and enter a new Judgment Order in Case No. 5:03CR70006-5, in every respect the same as the previous such Order, except as to date of entry;
5. Upon entry of the new Judgment Order, the Clerk of the Court **SHALL** enter a notice of appeal on behalf of Diaz-Rodriguez;
6. Petitioner is advised that he may make a motion in the Court of Appeals for the Fourth Circuit to have new counsel appointed to assist him with his appeal in Criminal Case No. 5:03CR70006-5; and
7. This matter is **STRICKEN** from the active docket of the court.

**ENTER:** September 25<sup>th</sup>, 2006.



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UNITED STATES DISTRICT JUDGE